THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.15201 of 2004

-

%21.04.2005

-

M/s maruthi Granites, Near Old Sivalayam Temple,

Old Guntur Town, Guntur, rep. By its Proprietor

Sanka Venkata Subba Rao

…Petitioner

Vs.

$ 1. The Collector and District magistrate, Prakasam District,
Ongole and others

….Respondents

Counsel for the Petitioner: Mr.P.Kamlakar

Counsel for the Respondents 1 &2: G.P. for Industries

Counsel for the Respondents 3 and 4: G.P. for Mines and Geology

Counsel for the Respondent No.5: Mr. C.V. Mohan Reddy

< Gist:

- Head Note:

? Cases referred:

NIL

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 15201 of 2004

Between:

M/s. Maruthi Granites Near Old Sivalayam Temple,
Old Guntur Town, Guntur, rep. by its Proprietor
Sanka Venkata Subba Rao.

..... PETITIONER

AND

1 The Collector and District Magistrate, Prakasam District,
Ongole.
2 The Mandal Revenue Officer, Chimakurthy Mandal,
Prakasam District.
3 The Asst. Director of Mines and Geology, Padma Towers,
2nd Floor, South Bypass, Ongole.
4 The Director of Mines and Geology, Govt of A.P., BRKR
Bhavan, Tank Bund Road, Hyderabad.
5 Smt. Sundaramani Balamani Kumari
rep. by her G.P.A. Dr. P. Anand,
S/o. Narasimha Rao H.No. 58-12-2,
Municipal High School Road, Santhapet, Ongole,
Prakasam District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, in the nature of a Writ of Mandamus or any other appropriate Writ, direction or order declaring the Order in Rc.E1-3434-2002,
dt. 17.7.2004 passed by the Collector and Magistrate, Prakasam District, Ongole, the 1st respondent herein, as illegal and void.

Counsel for the Petitioner: MR.P.KAMLAKAR

Counsel for the Respondents 1 &2: G.P. for Industries

Counsel for the Respondents 3 and 4: G.P. for Mines and Geology

Counsel for the Respondent No.5: Mr. C.V. Mohan Reddy

The Court made the following:

-

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.No.15201 of 2004

ORDER:

This petition is filed questioning the proceeding in

Rc.E1-3434-2002, dated 17-07-2004 issued by the Collector and District Magistrate,

Prakasam District (first respondent).

(2) The facts, which are not in dispute, are M/s Maruti Granites, represented by

Proprietor Sanka Venkata Subba Rao (petitioner) made an application to the Assistant Director of Mines and Geology, Hyderabad (third respondent) on 12-02-2001 for prospecting licence of black granite, in respect of eastern Ac.2-47 cents of the land in Sy.No.119 of Rajupalem Laxmipuram village (RL Puram), Chimakurthy Mandal, Prakasam District under the A.P. Minor Mineral Concession Rules, 1966. Thereafter, third respondent, vide his Lr.No.968/Q1/2001, dated 12-02-2001 called for the remarks of the Mandal Revenue Officer, Chimakurthy Mandal (second respondent) on the application of the petitioner as per G.O.Ms.No.181 Industries and Commerce (Mines-1) Department, dated 28-05-1998, who through his letter dated 21-02-2001, informed the third respondent his 'no objection' subject to the applicant paying Non-Agricultural Tax. Since petitioner failed to attend inspection and survey on four occasions, Director of Mines and Geology (fourth respondent) vide his proceedings dated 23-03-2002 rejected the application of the petitioner. Smt. S.Balamani Kumari through her G.P.A. (fifth respondent) filed O.S.No.10 of 2001 on the file of the Court of the District Judge, Ongole for declaration of her title to Acs.2.05 cents in Sy.No.119 of R.L Puram against the State of Andhra Pradesh represented by District Collector, Prakasam District, respondents 2 to 4 and the proprietor of the petitioner and others, and filed I.A.No.968 of 2001 therein seeking an injunction restraining Aaluri Malathi, Sanka Venkata Subba Rao (i.e., proprietor of the petitioner), Sidda Raghava Rao, Bommisetty Prasada Rao, Bommisetty Ramanadha Rao, Bommisetty Srinivasa Rao and Bommisety Sudhakara Rao (defendants 6 to 13 in the suit) or their representatives or by anybody at their instance from obtaining a 'No Objection Certificate' and Mining lease, and to restrain defendants 2 to 4 therein i.e., State of Andhra Pradesh represented by the first respondent herein and respondents 2 and 3 herein, in respect of Acs.4.49 cents in Sy.No.119 of R.L.Puram, which was dismissed on 13-06-2002 on merits after enquiry. Thereafter, petitioner submitted an application for quarrying lease in respect of 1.000 hectare on the eastern side of Sy.No.119 of R.L.Puram to the third

respondent, who again sought the remarks of second respondent who vide his report dated 19-06-2002 sent his no objection to the third respondent. On 29-08-2002, A.A.O.No.1758 of 2002, filed by the fifth respondent questioning the order dated 13-06-2002 in I.A.No.968 of 2001 in O.S.No.10 of 2001, was dismissed for default by a Division Bench of this Court. In the meanwhile, fifth respondent filed an application before the first respondent seeking cancellation of the NOC, dated 21-02-2001, issued by the second respondent to the petitioner. First respondent, by his order dated 04-09-2002 stayed the operation of the said NOC issued by the second respondent. So, petitioner filed an application before the first respondent to vacate the said order. In the meanwhile, fifth respondent filed C.M.P.No.16268 of 2002 for restoration of A.A.O.No.1758 of 2002, and a Division Bench of this Court, by its common order dated 12-09-2002 while allowing C.M.P.No.16268 of 2002, dismissed the A.A.O. holding:

> "we hold that the learned judge, rightly dismissed I.A.968 of 2001 in O.S.10 of 2001. However, to protect the interests of the appellant-plaintiff in case the plaintiff ultimately succeeds in the suit, we direct the respondent No.5 (petitioner) that if mining operations are carried out by him, he has to submit a report by every two weeks to the trial court regarding the extent of the mining operation made by him during that period. The appellant-plaintiff, if so desires, may depute his representative to watch the mining operation without creating any trouble to the respondent No.5 while carrying on the mining operations. We, further direct the District Judge to dispose of the suit O.S.No.10 of 2001 preferably within a period of six months from the date of receipt of this order. The appeal filed by the appellant-plaintiff stands dismissed. The ex party order dated 27-8-2002 is set aside. There shall be no order as to costs".

In the meanwhile, vide order dated 05-06-2003, first respondent vacated the stay of NOC dated 21-02-2001 issued by the second respondent to the petitioner, vide his order dated

04-09-2002. Questioning the said order dated 04-09-2002 of the first respondent, fifth respondent filed W.P.No.11278 of 2003, which was allowed at the stage of admission on 17-06-2003, on the ground of want of notice to the fifth respondent,

with a direction to the first respondent to dispose of the application of the fifth respondent to cancel the NOC dated 21-02-2001 issued to the petitioner, within a period of four weeks from that date. Therefore, first respondent vide his proceedings dated 16-08-2003, while keeping in abeyance the NOC dated 21-02-2001, issued by the second respondent, posted the case for hearing. Questioning that order, petitioner filed W.P.No.19396 of 2003. In the meanwhile, acting on the quarry lease application dated 17-06-2002 of petitioner, fourth respondent vide proceedings dated

18-06-2003 granted quarry lease for black granite over the eastern Acs.2.05 cents in Sy.No.119 of R.L. Puram to the petitioner. Thereupon, fifth respondent filed an application before the first respondent to cancel the NOC dated 19-06-2002, issued by the second respondent in favour of the petitioner. Acting thereon, by the proceedings impugned in this petition, first respondent kept the NOC dated 19-06-2002 issued by the second respondent, 'till the declaration of the title is finally decided by the civil court' and directed the third respondent to take necessary further action accordingly.

(3) Before adverting to the contentions of the learned counsel for the parties, it is necessary to state a few more facts, to make the narration of facts complete.

(4) The total extent of Sy.No.119 of R.L.Puram village is

Acs.4.49 cents. It originally belonged to Telikepalli Lakshmi Narasamma. The admitted case is the said Lakshmi Narasamma surrendered Acs.2.44 cents to the Government in the surrender proceedings in the declaration filed by her under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973.

(5) The case of the petitioner is that Lakshmi Narsamma bequeathed the remaining Acs.2.05 cents in Sy.No.119 of R.L.Puram in favour of her daughter Aluri Malathi, who, after the death of Lakshmi Narsamma on 11-12-1980, sold that extent to him under a registered sale deed dated 30-12-2000 and delivered possession of the

same to him. Whereas the case of the fifth respondent is that Lakshmi Narsamma, even during her lifetime, sold Acs.2.05 cents in Sy.No.119 of R.L.Puram to Ravulapalli Venkaiah under a registered sale deed, who in turn sold that extent to N.Hanumantha Rao under a sale deed dated 11-10-1992, and that she purchased the said Acs.2.05 cents in Sy.No.119 of R.L.Puram from Hanumantha Rao under a registered sale deed dated 04-11-1996, and thus she became lawful owner of the Acs.2-05 cents in Sy.No.119 of R.L.Puram. As stated earlier, fifth respondent filed O.S.No.10 of 2001 for declaration of her title to Acs.2.05 cents in Sy.No.119 of R.L.Puram, with a schedule, containing a sketch of the land in Sy.No.119 of R.L.Puram, in a rectangular form, dividing it into three bits from west to east showing the western bit of Acs.2.05 cents as plot-A; middle, Ac.0.39 cents bit as plot-C middle and eastern Acs.2.05 cents bit as plot-B, claiming title to the western Acs.2.05 cents A, bit or in the alternative to the eastern B bit of Acs.2.05 cents. The prayer in the plaint is to declare her "rights in the suit schedule property as shown in the schedule noted as plot (A). In case if the court comes to a conclusion that she is entitled to plot (B) of suit schedule, a declaration in respect of that plot (B)" and the consequential relief of possession and costs. So, prima-facie the case of the fifth respondent is that she is owner of western Acs.2.05 cents in Sy.No.119 shown as bit 'A' in the plaint schedule of O.S.No.10 of 2001. Since the plaint contains the consequential relief of possession, it is prima facie clear that fifth respondent is not in possession of either western A bit of Acs.2.05 cents or eastern B bit of Acs.2.05 cents, shown in the schedule to O.S.No.10 of 2001. Applications submitted by the petitioner for prospecting and quarry leases are in respect of the eastern Acs.2.05 cents in Sy.No.119 of R.L.Puram. In fact, the learned District Judge in his order dated 13-06-2002 in I.A.No.968 of 2001 in O.S.No.10 of 2001 observed:

> "As per Exs.A2 and A9, the western boundary of the said land is alleged to have been in Sy.No.118 and it belongs to Anand Granites. Therefore, the land that was being

> claimed by the petitioner (fifth respondent) is on the western side of the land in Sy.No.119 and that boundaries mentioned in Ex.A9 are tallying with the boundaries mentioned in Ex.A2 to the extent of the northern side and the western side and do not tally with the eastern boundary and the southern boundary."

and had also observed that the plaint plan and the schedule are not in accordance with the title deeds relied upon by the fifth respondent and that she failed to establish on which side of the Sy.No.119, the land claimed by her is existing and hence is not entitled to the injunction sought.

(6) The admitted case is that an extent of Acs.103.33 cents, including Acs.2.44 cents in S.No.119 of R.L.Puram surrendered by Lakshmi Narasamma, was handed over to the Animal Husbandry Department on 31-03-1979, for establishment of Cattle Breeding Farm. Subsequently, as per the order of the Land Reforms Appellate Tribunal, Acs.9.04 cents therein was surrendered to a third party and the remaining Acs.94.29 cents was retained with Animal Husbandry Department. The Government, vide G.O.Ms.No.23, dated 23-02-1999 (marked as Ex.B7 in I.A.No.968 of 2001 in O.S.No.10 of 2001), ordered shifting of the Cattle Breeding Farm from Ramatheertham to the site belonging to
the endowments Department at Chadalawada and the land of Acs.102.78 cents, earlier granted to the Animal Husbandry and Fisheries Departments was handed over to A.P. Mineral Development Corporation.

(7) The contention of Sri E.Manohar, learned senior counsel
for the petitioner is that by virtue of G.O.Ms.No.181, dated
28-05-1998, Mandal Revenue Officer, has to send the NOC directly to the Assistant Director of Mines and Geology, marking a copy thereof to the Collector, who has to send his comments, if any, to the Director of Mines and Geology within 30 days from the date of receipt of a copy of the No Objection Certificate from the Mandal Revenue Officer, and since the petitioner was not interested in the earlier

prospecting licence, he did not pursue that prospecting licence application and had applied afresh for mining lease, and since the Mandal Revenue Officer had reported no objection and since the Collector did not make any comments thereon, the Director of Mines and Geology can act on the NOC issued by the Mandal Revenue Officer, and since the collector is not the appellate authority over the NOC issued by the Mandal Revenue Officer, first respondent exercising appellate jurisdiction over the NOC issued to the petitioner by the second respondent, on a petition filed by the fifth respondent, and keeping the NOC dated 19-06-2002 issued by the second respondent in abeyance is unsustainable and consequently all the orders passed by respondents 3 and 4, in view of the impugned order passed by the first respondent, are also unsustainable. It is his contention that since second respondent filed a counter affidavit in I.A.No.968 of 2001 in O.S.No.10 of 2001 alleging that Acs.2.44 cents in Sy.No.119 was surrendered by the Lakshmi Narsamma is on the western side of that land and that very Acs.2.44 cents was later given to A.P. Mineral Development Corporation Limited, and that the claim of the fifth respondent in the suit is to that western Acs.2.44 cents in Sy.No.119, which was surrendered by Lakshmi Narsamma to the Government, and since eastern Acs.2.05 cents in Sy.No.119 is in possession of the petitioner, he issued the NOC dated 21-02-2001 to him and when that counter affidavit was adopted by the third respondent and the State of Andhra Pradesh represented by the first respondent and when the fifth respondent failed to get a favourable order in his favour either in the trail court or in this court in appeal, merely because fifth respondent approached him, first respondent ought not to have kept the NOC dated 16-06-2002, issued by the second respondent in favour of the petitioner, in abeyance.

(8) The contention of the learned Government pleader is that since the then Mandal Revenue Officer issued the NOC without taking into consideration the relevant facts and did not mark copy of the NOC to the collector as contemplated by the G.O.Ms.No.181 dated 28-05-1998, disciplinary action is being initiated against him,

and since both the NOCs were issued without proper verification, first respondent keeping the NOC, by a well reasoned order in abeyance needs no interference.

(9) The main contention of Sri C.V.Mohan Reddy learned counsel for the fifth respondent is that petitioner, by playing fraud and in collusion with the Mandal Revenue Officer, obtained the two NOCs from the first respondent. It is his contention that either after the first respondent passed the order dated 04-09-2002, or during the pendency of any of the subsequent proceedings was the attention of the first respondent brought to the notice of the second NOC dated 16-06-2002 issued by the second respondent, either by the second respondent or the petitioner. It is his contention that since the order impugned in this petition clearly shows the fraud played by the then Mandal Revenue Officer and the petitioner and since the second respondent not reporting to the first respondent about the second NOC issued by him while submitting the records of the case to the first respondent on 18-12-2002 and since fraud vitiates all proceedings, first respondent as superior in office to the second respondent has every right and authority to correct or set at naught the wrong and fraudulent order passed by the second respondent, first respondent has every right and authority to pass the order impugned. He contends that in any event since O.S.No.10 of 2001 filed by the fifth respondent is posted for arguments and is likely to be disposed of in a short period, first respondent keeping the NOC in abeyance during the pendency of the suit is but in the interests of both parties and also justice.

(10) In my considered opinion, question whether the second respondent issued the NOCs dated 21-02-2001 and 19-06-2002 surreptitiously or fraudulently is not very relevant for deciding this petition, because question of the Mandal Revenue Officer issuing notice to the third parties, on communication received by him from the third respondent for issuance of No Objection Certificate in respect of the applications for prospecting/mining leases received by him, does not arise, because the purpose of

an NOC is to find out if the Government have any claim over the land, over which the lease is sought or if there are any dues to the Government in respect of the land over which the lease is sought. Admittedly Government is not claiming any title to the eastern Acs.2.04 cents of land in Sy.No.119 and admittedly fifth respondent is not in possession thereof. So, the fact that second respondent may not have issued notice to the fifth respondent before issuing two NOCs is not of any consequence. If I may say so it is not necessary to go into how the NOC dated 21-012001 was issued, because it is not the subject matter of dispute, and the application for prospecting licence in respect of which that NOC was obtained, met with natural death for the failure of the petitioner attending inspection and survey vide proceedings dated 23-02-2002 of the fourth respondent.

(11) Immediately after dismissal of I.A.No.968 of 2001 on
13-06-2002 i.e., on 17-06-2002, petitioner applied for quarry licence in respect of the eastern Acs.2.04 cents in Sy.No.119 of R.L.Puram to the third respondent. As per the procedure prescribed in G.O.Ms.No.181, dated 28-05-1998, third respondent vide his letter dated 17-06-2002, sought for the views of the second respondent, and second respondent through his letter dated
19-06-2002 sent the NOC to the third respondent. Here, it should remembered that second respondent specifically stated in his counter affidavit in I.A.No.968 of 2001 in O.S.No.10 of 2001 that the claim of the fifth respondent is in respect of the western side Acs.2.04 cents and the eastern Acs.2.05 cents in Sy.No.119 is in possession of the petitioner and that counter affidavit was adopted by the State of Andhra Pradesh represented by first respondent and respondents 3 and 4 also. So, first respondent feigning ignorance of the NOC dated 20-02-2001 and doubting its genuineness is rather strange.

(12) All these apart when a Division Bench of this Court in A.A.O.No.968 of 2001, in the presence of the first respondent representing the State, and respondents 2 and 3

by its order dated 12-09-2002 clearly held that the petitioner is entitled to carry on his mining operations and submit in every two weeks, to the trial court a report regarding the extent of mining and that fifth respondent, in order to protect his interests, can depute his men, without creating any trouble, first respondent setting at naught that order, by the order impugned, that too after making a detailed reference to the order of the Division Bench, is rather strange.

As a responsible officer, heading the district administration first respondent should know that he cannot set at naught a judgment of a court, that too of a High Court, in a proceeding before which he is a party, and about which he has knowledge, in an indirect fashion, because it is well know that what cannot be done directly cannot be permitted to be achieved in an indirect fashion. By passing the order impugned, which has the result of setting at naught the order of a Division Bench of this Court at the instance of the fifth respondent, first respondent acted like an appellate authority over the order of Division Bench of this court.

(13) I am not able to agree with the contention of the learned counsel for the second respondent that as administrative head first respondent, in exercise of correctional jurisdiction, has the authority to keep the NOC issued by the Second respondent in abeyance, because second respondent issued the NOC dated

19-06-2002 as per G.O.Ms.No.181 Industries and Commerce (Mines-I) Department dated 28-05-1998, the action that can be taken by the collector on an NOC issued by the Mandal Revenue Officer, is to send his comments to the fourth respondent. Basing on the comments of the first respondent, fourth respondent has to take a decision on the application of an applicant. That G.O. does not vest any power of appeal, or superintendence in the first respondent over the NOC issued by the second respondent under that G.O. So, if at all, first respondent could send a report or his comments, on the NOC issued by the second respondent, to the fourth respondent, but he has no power or authority to sit in judgment over the NOC issued by the second respondent. So it is clear that first respondent while passing the order

impugned assumed power not vested in him.

(14) In the order impugned in this petition, first respondent stated that second respondent committed five irregularities i.e., viz.,

> "1. He has issued No Objection Certificate in respect of the land in S.No.119 of R.L.Puram village, Chimakurty Mandal in favour of Sri S.V.Subba Rao, Proprietor, M/s Maruthi Granites vide his letter Rc.B-141-2001, dated 21-02-2001. He has not submitted a copy of the letter to the District Collector, Ongole as per G.O.Ms.181 Industries and commerce Department dated
> 28-05-1998. He has not even marked a copy to the District Collector, Ongole.
>
> 2 . No Objection Certificate issued by the Mandal Revenue officer, Chimakurthy dated 21-02-2001 also not received by the Assistant Director, Mines and Geology, Ongole.
>
> 3 . The Mandal Revenue Officer, Chimakurthy in his letter Rc.B-607-2002, dated 18-12-2002 while submitting records has not reported that No Objection Certificate was issued by him in his letter No.Rc.B-419-2002, dated 19-06-2002 in respect of the land in S.No.119 fo R.L.Puram village of Chimakurthy Mandal in favour of Sri S.V.Subba Rao, Proprietor, M/s Maruthi Granites, Chimakurthy.
>
> 4. there is title dispute regarding S.No.119 of R.L.Puram village Chimakurthy Mandal in O.S.No.10/2001 on the file of District Judge, Ongole which was filed in the year 2001 in which Mandal Revenue Officer, Chimakurthy is also one of the respondents. It is not known how he issued No Objection Certificate second time on 12-06-2002, when the matter is pending in civil court. He even not brought to the matter to the collector's Court at the time of hearing, on the appeal filed by smt. Sundaramani Bala mani Kumari.
>
> 5. Basing on the second time No Objection Certificate issued by the Mandal Revenue Officer, on 12-06-2002, the Director of Mines and Geology, Hyderabad granted quarry lease in respect of land in S.No.119 of R.L.Puram village on 18-06-2003."

Grounds 1 and 2 have no relevance for this petition, because the application in respect of which that NOC dated 21-02-2001 became redundant by the date of the impugned order for the reasons mentioned in para 10 supra. That apart as stated earlier, in his counter in I.A.No.968 of 2001 in O.S.No.10 of 2001, second respondent clearly mentioned about his issuing an NOC dated

21-02-2001 to the petitioner and first respondent, representing the State, adopted the said counter affidavit. When first respondent who was representing the State in O.S.No.10 of 2001, appeared therein, it has to be taken that he is aware of the application for prospecting licence made by the petitioner. If he felt that petitioner cannot granted that licence, or if his defence should be different from that of the second respondent, first respondent ought to have filed a separate counter, condemning the attitude of the first respondent. He did not do so. If I may say so the second (alleged) irregularity cannot be true, because third respondent taking further steps on an application for prospecting or mining lease arises only after he receives the NOC from the Mandal Revenue Officer, because clause 5 of G.O.Ms.No.161 Industries and Commerce (Mines-I) Department dated 28-05-1998 reads:

> "The Assistant Director of Mines & Geology will submit his report along with recommendations of the Mandal Revenue Officer to the Director of Mines and Geology within 15 days from the date of receipt of report from Mandal Revenue Officer. The Assistant Director of Mines & Geology shall send his recommendations directly to Director of Mines & Geology without routing the same through the Regional Deputy Director of
> Mines & Geology to save time."

and since the proceedings No.6830/R3(2)/2001 dated 23-03-2001 of the fourth respondent shows that that the third respondent vide his letter dated 08-11-2001 recommended for rejection of the prospecting licence application of the petitioner since he failed to "attend for inspection and survey even though four chances are given". Question of third respondent calling the petitioner for survey and inspection arises only if the second respondent issues NOC. So had not the second respondent issued NOC, third respondent would not have called the petitioner to attend survey and inspection.

(15) Similarly third irregularity mentioned in the proceedings of first respondent impugned in this petition cannot be true because there was no need for the second respondent marking a reference to the NOC dated 19-06-2002, while submitting the file in connection with issuance of the NOC dated 21-02-2001, even when it relates

to the same land, because a subordinate officer, when called upon to send relevant file relating to the appeal preferred before it from that subordinates order, need only send the file but need not offer any comments, that too when his comments are not called for. It should not be forgotten that by 18-12-2002, petitioner has an order in his favour from the Division Bench of this court in A.A.O.No.1758 of 2002 dated 12-09-2002, even to the knowledge of first respondent, because he was representing the State who is the respondent therein.

(16) It is significant to note that the impugned order does not state that a copy of the NOC dated 19-06-2002 was not received by the first respondent. The ground on which the order impugned is passed is found in para 11 of that order. It says "it is not desirable to conduct a parallel enquiry regarding the title of the suit scheduled property", forgetting the fact that he has no right to decide title and cannot set at naught the order of a Division Bench of this Court, before which he also is a party representing the State Government. Fifth respondent who could not succeed in stalling the petitioner in two courts, could achieve his goal, through the order impugned by approaching the first respondent. For the simple reason that the order impugned in this petition makes the order passed by a Division Bench in favour of petitioner, nugatory, it is liable to be set aside.

(17) I am unable to agree with the contention of the learned counsel for the fifth respondent that since the trial of the suit is concluded, there is no need to interfere with the order impugned, since its life is only till the disposal of the suit, because none except the apex Court can make a final order of this Court redundant, and so the Rule Nisi has to be and hence is made absolute.

(18) The petition therefore, is allowed with costs. Proceedings in Rc.E1-3434-2002 dated 17-07-2004 issued by the first respondent are set aside. Advocate fees is fixed at Rs.2,500/- to be paid personally by the officer, who passed the impugned order.

_____

C.Y.SOMAYAJULU, J

Date: 21-04-2005

YCR

Note:

L.R. copy to be marked.

To

1 The Collector and District Magistrate, Prakasam District, Ongole.
2 The Mandal Revenue Officer, Chimakurthy Mandal,
Prakasam District.
3 The Asst. Director of Mines and Geology, Padma Towers,
2nd Floor, South Bypass, Ongole.
4 The Director of Mines and Geology, Govt of A.P., BRKR
Bhavan, Tank Bund Road, Hyderabad.
5. 2 CCs to G.P. for Mines and Geology, High Court Buildings,
Hyderabad. (OUT)

6. 2 C.D. copies.

7. 2 C.Cs to G.P. for Industrie, HC Buildings, Hyderabd.